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HOUSE BILL 3298 By  
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SENATE BILL 3341  
By Cooper

AN ACT to amend Tennessee Code Annotated, Sections 6-51-102, 6-51-108, 6-51-115, and other provisions of Title 6, Chapter 51, Part 1, relative to municipal annexation.

WHEREAS, it is the intent of the General Assembly to reaffirm the power granted to municipalities to annex territory by ordinance, subject to procedures and safeguards provided by statute; and

WHEREAS, counties should be held harmless for revenue losses they suffer as a result of the exercise of municipal annexation power; and

WHEREAS, the General Assembly wants to continue to provide for orderly urban growth, now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 6-51-102, is amended by deleting subsection (b) and replacing it with the following:

(b)(1) Before any territory may be annexed under this section by a municipality upon its own initiative, the governing body shall adopt a plan of services setting forth at a minimum the services to be provided and the projected timing of the services.

(2) The plan of services shall include, but not be limited to: police protection, fire protection, water service, electrical service, sanitary sewer or septic system service, solid waste collection, road and street construction and repair, recreational facilities and programs, street lighting, and zoning service. The plan may except services that are

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provided by another public agency or private company in the area to be annexed.

(3) The plan of services shall specify the level of each of the enumerated services to be provided as of the effective date of the annexation. The plan of services shall also include the projected timing by which such services will be provided at a level substantially commensurate with the level of services provided in similar areas of the municipality before the annexation.

(4) Before any plan of services is adopted, it must be submitted to the local planning commission, if there is one, for study and a written report to be rendered within ninety (90) days of submission, unless by resolution the governing body allows a longer period. Prior to the adoption of the plan of services, the municipality shall hold a public hearing. Notice of the time and place of the public hearing shall be published in a newspaper of general circulation in the municipality seven (7) days before the hearing. The notice shall include the locations of a minimum of three (3) copies of the plan of services, which the municipality shall provide for public inspection during all business hours from the date of notice until the public hearing.

SECTION 2. Tennessee Code Annotated, § 6-51-108, is amended in Subsection (b) by deleting the language "a year" from the first sentence of the subsection and replacing it with "one hundred and eighty (180) days".

SECTION 3. Tennessee Code Annotated, § 6-51-108, is further amended by adding the following as subsection (c):

(c) At any time after one hundred and eighty (180) days after an annexation by ordinance takes effect and until the plan of services is fulfilled, an aggrieved property owner in the annexed territory claiming that the municipality has failed to comply with its plan of services may bring an action in the appropriate court of equity jurisdiction to enforce the plan of services. If the court finds that the municipality has unjustifiably failed to comply with the plan, the court may issue a writ of mandamus to compel the

municipality to provide the services contained in the plan. In making its determination, however, the court shall consider: (1) whether the health and safety of the residents of the annexed area have been jeopardized; (2) whether a majority of residents in the annexed area want the services; (3) whether the services demanded are equivalent to those being provided to similar areas of the municipality; and (4) whether the municipality's failure is due to circumstances beyond its control. If the court finds no mitigating justification for the municipality's failure to comply with the plan, the court shall establish a timetable for the provision of the services in question. The court shall enjoin the municipality from any further annexations until the services subject to the court's order have been provided to the court's satisfaction, at which time the court shall dissolve its injunctions. If the court determines that the municipality has unjustifiably failed to comply with the plan of services, the court shall assess the costs of the suit against the municipality.

SECTION 4. Tennessee Code Annotated, § 6-51-115, is amended by designating the existing section as subsection (a), renumbering present subsections as subdivisions, and adding the following as new subsections:

(b) In addition to the preceding provisions of this section, when a municipality annexes territory in which there is retail activity at the time the annexation takes effect, the following apply:

(1) Notwithstanding the provisions of § 57-6-103 or any other law to the contrary, for retail activity involving the sale of beer, the county shall continue to receive annually an amount equal to the amount received by the county in the twelve (12) months immediately preceding the effective date of the annexation for beer establishments in the annexed area that produced Wholesale Beer Tax revenues during that entire twelve (12) months. For establishments that produced Wholesale Beer Tax revenues during only a portion of that twelve (12)

months, the county shall continue to receive an amount annually determined by averaging the amount of Wholesale Beer Tax revenue produced during each full month the establishment was in business during that time and multiplying this average by twelve (12). The provisions of this subdivision are subject to the exceptions in subsection (d).

(2) Notwithstanding the provisions of § 67-6-712 or any other law to the contrary, for retail activity subject to the Local Option Revenue Act, the county shall continue to receive annually an amount equal to the amount of revenue the county received pursuant to § 67-6-712(a)(2)(A) in the twelve (12) months immediately preceding the effective date of the annexation for business establishments in the annexed area that produced Local Option Revenue Act revenue during that entire twelve (12) months. For business establishments that produced such revenues during only a portion of that twelve (12) months, the county shall continue to receive an amount annually determined by averaging the amount of Local Option Revenue produced by the establishment and allocated to the county under § 67-6-712(a)(2)(A) during each full month the establishment was in business during that time and multiplying this average by twelve (12). The provisions of this subdivision are subject to the exceptions in subsection (d).

(c) Notwithstanding the provisions of § 67-2-119 or any other law to the contrary, when a municipality annexes territory in which there is residential use at the time the annexation takes effect, the county shall continue to receive annually an amount from revenues from the Hall Income Tax equal to the amount the county received from payments made by residents of the annexed territory for the taxable year immediately preceding the effective date of the annexation, subject to the exceptions in subsection (d). The requirements of this subsection do not apply to any annexation effected pursuant to petition or affirmative vote of the residents in a referendum.

(d) Subsections (b) and (c) are subject to these exceptions:

(1) Subdivision (b)(1) ceases to apply as of the effective date of the repeal of the Wholesale Beer Tax, should this occur.

(2) Subdivision (b)(2) ceases to apply as of the effective date of the repeal of the Local Option Revenue Act, should this occur.

(3) Subsection (c) ceases to apply as of the effective date of the repeal of the Hall Income Tax, should this occur.

(4) Should the General Assembly reduce the amount of revenue from the Wholesale Beer Tax, Local Option Revenue Act, or Hall Income Tax accruing to municipalities by changing the distribution formula, the amount of revenue accruing to the county under subsections (b) and (c) will be reduced proportionally as of the effective date of the reduction.

(5) A county, by resolution of its legislative body, may waive its rights to receive all or part of the revenues provided by subsections (b) and (c). In these cases, the revenue shall be distributed as provided in §§ 57-6-103, 67-6-712, and 67-2-119 of the respective tax laws unless otherwise provided by agreement between the county and municipality.

(6) Revenues being paid to a county by or on behalf of the annexing municipality are limited to the amounts provided in subsections (b) and (c). Growth in revenues produced by the respective taxes and distributed based upon situs shall accrue to the annexing municipality. Any decrease in these revenues shall not affect the amount remitted to the county pursuant to subsections (b) and (c) except as otherwise provided in this subsection

(d). Any new revenues generated in the annexed area after the effective date of the annexation shall accrue to the municipality.

(e)(1) It is the responsibility of the county within which the annexed

territory lies to certify and to provide to the department of revenue a list of all tax revenue producing entities within the proposed annexation area.

(2) The department of revenue shall determine the local share of revenue from each tax listed in this section generated within the annexed territory for the year before the annexation becomes effective, subject to the requirements of subsection (b) and (c). This revenue shall be known as the "annexation date revenue".

(3) The department of revenue shall distribute an amount equal to the annexation date revenue annually to the county in which the annexed area is located.

(4) The department of revenue shall distribute the difference between actual revenue in excess of annexation date revenue to the annexing municipality.

SECTION 5. Tennessee Code Annotated, Title 6, Chapter 51, Part 1, is amended by adding the following as a new section:

A municipality may not annex by ordinance upon its own initiative territory in any county other than the county in which the city hall of the annexing municipality is located, with these exceptions:

(1) A municipality located in two (2) or more counties as of November 25, 1997, may enact such annexations in all such counties.

(2) A municipality may enact such an annexation with the approval by resolution of the county legislative body of the county in which the territory proposed to be annexed is located.

SECTION 6. No provision of this act applies to an annexation in any county with a metropolitan form of government in which any part of the general services district is annexed into the urban services district.

SECTION 7. No provision of this act applies to annexation ordinances being litigated as of the effective date of this act nor to any pending, present, or future annexations done pursuant to written contract between a municipality and a developer in existence on the effective date.

SECTION 8. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 9. Section 3 of this act shall be retroactive and shall apply to any annexation by ordinance upon a municipality's own initiative initiated on or after November 25, 1997. All other provisions of this act shall take effect on July 1, 1998, the public welfare requiring it, and shall apply only to annexations initiated on or after that date.